

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR TRAINING SERVICES

SKILLSOFT CORPORATION

1. Introduction

A. Parties

This Contract for Training Services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and SkillSoft Corporation (“Vendor”), with its principal place of business at 107 Northeastern Blvd., Nashua, NH 03062.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-397, on January 24, 2017, for Technology Based and Instructor Led Training. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-397 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Training Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; and Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-397, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-397, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR may extend this Contract, by amendment, for up to two (2) optional one-year terms. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Training Service Offerings

Training services available under this Contract are limited to Training Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their training services offering; however, any changes must be within the scope of the RFO and training services

awarded based on the posting described in Section 1.B above. Vendor may not add training services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Mr. Brian Prusak
SkillSoft Corporation
107 Northeastern Blvd.
Nashua, NH 03062
Phone: (603) 324-3000
Facsimile: (603) 821-5151
Email: brian.prusak@skillsoft.com

7. Service Agreement

A) Conflicting or Additional Terms

In the event that conflicting or additional terms in Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer of Publisher.

8. Authorized Exceptions to Agreement, including this Contract and any Appendices, Terms and Conditions.

1. Appendix A, Section 5. Intellectual Property Matters, K. License to Customer is hereby restated in its entirety as follows:

K. License to Customer

Subject to the restrictions stated in this Contract and any Purchase Order issued under this Contract, Vendor grants to Customer and Customer accepts, a nonexclusive, non-transferable license (without the right to sublicense) for the License Term set forth in the applicable Purchase Order, to use and to allow the applicable authorized audience to access and use the Vendor product(s) set forth therein for internal training purposes only.

All Vendor products are the property of Vendor and/or its third party publishers and/or licensors and is protected by copyright and other laws relating to proprietary rights. Except for the limited licenses granted pursuant to this Contract, the terms of the Contract do not convey any ownership or other rights of any kind to DIR and/or Customer in or to Vendor property. Vendor and its publishers and licensors have and shall retain all right, title and interest in and to the Vendor property. Vendor reserves all rights not expressly granted to DIR and/or Customer herein. Except as expressly provided in this Contract, Customer shall have no right to receive any corrections, enhancements or other modifications.

Except as may otherwise be permitted in this Contract, Customer shall not (a) reproduce publish, display, distribute, sell, sublicense, transfer, rent, lease, publish, broadcast, timeshare, loan, disclose, or otherwise make available the Vendor property, or any part thereof, to any third party; (b) reverse engineer, disassemble, decompile or otherwise attempt to derive source code from the Vendor property, or any part thereof; (c) modify, translate, adapt, alter or create derivative works (as defined under the United States copyright laws) based upon the Vendor property or any part thereof; (d) remove any proprietary notices, labels, or trademarks or service marks on any Vendor property; (e) merge the Vendor property, or any component thereof with another program (unless otherwise authorized herein); (f) use the Vendor property, or any component thereof, for any purposes other than those explicitly stated in the Contract; (g) have any right to any source code for the Vendor property (h) permit any party not specifically licensed herein to use the Vendor property; (i) use download functionality enhancement tools for purposes contrary to those authorized under this Contract and any applicable Purchase Order; or (j) post any note or comment using a Vendor product which permits such posting functionality that is unlawful or that would constitute a criminal offense or give rise to civil liability.

Customer agrees not to use or permit the use of the Vendor property, or any part thereof, to engage in any illegal or tortious activities. Customer further agrees not to use or permit the use of the Vendor property for purposes deemed under applicable law to be illegal or unlawful, or to encourage illegal or unlawful activities.

Provided that Customer reproduces all copyright and other proprietary notices, Customer may make copies of the Vendor product(s) available and licensed by Customer in CD-ROM format for deployment and backup purposes as reasonably necessary to carry out the rights expressly granted by the Contract. Customer shall take all reasonable security precautions to ensure that only the authorized audience accesses the Vendor property.

Customer acknowledges that all of the restrictions on access to and use of the Vendor property contained in this Section 2 and elsewhere in this Contract apply to the authorized audience. Customer will take all necessary steps to ensure compliance of the authorized audience therewith.

2. **Appendix A, Section 10. Vendor Responsibilities, I. Limitation of Liability** is hereby restated in its entirety as follows:

I. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

3. **Appendix A, Section 10. Vendor Responsibilities, L. Required Insurance Coverage**, is hereby restated in its entirety as follows:

L. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed, in the State of Texas, and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Contractual liability coverage for liability assumed under the Contract;
- b) Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; and
- d) Waiver of Subrogation

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage.

The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured

4. Appendix A, Section 10. Vendor Responsibilities, O. Security of Premises, Equipment, Data and Personnel, is hereby restated in its entirety as follows:**O. Security of Premises, Equipment, Data and Personnel**

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other onsite property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

5. **Appendix A, Section 10. Vendor Responsibilities, S. Background and/or Criminal History Investigation**, is hereby restated in its entirety as follows:

S. Background and/or Criminal History Investigation

Prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer, where allowed by law. Should any employee or subcontractor of the Vendor who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

6. **Appendix A, Section 11. Contract Enforcement, B. Termination, 4) Termination for Cause, b) Purchase Order**, is hereby restated in its entirety as follows:

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

(Balance of this page intentionally left blank.)

Vendor Contract No. _____

This Contract is executed to be effective as of the date of last signature.

SKILLSOFT CORPORATION

Authorized By: Signature on File

Name: Brian Prusak

Title: VP Finance Operations

Date: 6/15/2017

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 6/19/2017

**Office of
General Counsel:** DB 6/15/2017